

BREAK CLAUSES

Vacant possession, reinstatement, obligations to remove
chattels and fixtures

Andrew Walker KC

Reconciliation of Conflicts

1. **Conflicting clauses in the lease.**
2. **Conflicting commercial interests for the tenant.**
3. **Conflicting commercial interests for the landlord.**

Result: conflicting interests of landlord and tenant?

VACANT POSSESSION



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Vacant possession – what to remove?

The property is free of three things:

1. People

2. Chattels

> Other than any demised chattels which need to be returned

> Only if a substantial impediment to the landlord's use of the property or a substantial part of it (“exceptional” – *Cumberland Consolidated*)

3. Legal interests

Vacant possession – what to remove?

Two strands:

1. Physical enjoyment

- > The property must be physically empty: no people and no chattels.

2. Control

- > The landlord must be able to assume and enjoy immediate and exclusive possession and control. There must be no-one at the property who is asserting a right to use it (explicitly or implicitly).



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Vacant possession – fixtures

- Chattels are not part of the land, so must generally be removed.
- (Better view) Fixtures become part of the land, so are part of the property to be handed back at the end of the term (including a break date).
 - > Includes tenant's fixtures, which the tenant has the right – but not an obligation (at common law) – to remove at the end of the term.

Vacant possession – alterations

- **Lawful (i.e. permitted) alterations are part of the property.**
 - > Whether they are fixtures or part of the land itself.
- **The same probably applies to unlawful alterations (i.e. those made in breach of covenant).**

Fixtures and alterations – to remove or not to remove?

- **Removal/reinstatement not necessary to give vacant possession at common law.**
 - > Unless the lease says something different, the tenant is entitled to hand back the property as it stands.
- **Conflicts:**
 - > Are particular elements fixtures (can be left) or chattels (must be removed)?
 - [Are they substantial enough to matter?]*
 - [If in doubt, strip them out?]*
 - > Unlawful alterations not reinstated: potential damages.
 - > Another obligation might require removal of tenant's fixtures: potential damages.

Fixtures and alterations – importance of lease terms

- **Does the lease require something different?**
 - > Must comply with any express requirement.
 - > What if it only *arguably* requires something different?

Riverside Park v NHS Property Services [2016]



GVA/Roy Backhouse & Co

Riverside Park v NHS Property Services [2016]

Decision: The items in issue were chattels, and the partitions were a substantial impediment, so no vacant possession.

Obiter:

1. The exclusion of tenant's fixtures from the definition of "the Premises" meant that they had not become part of the property.
2. The tenant was under a pre-existing obligation to reinstate the premises under a licence to alter (due to a breach of the licence conditions).

As a result, the items in issue had to be treated as chattels in any event.

Lessons from *Riverside Park*

1. Read the lease and any licences.
2. Visit the building and examine everything that might be a problem.
3. Is early expert assistance needed?
4. There *could* be a danger for the break in ‘over-removal’.

Conflict: how do you balance duties to remove and not to remove?

Capital Park Leeds v Global Radio Services [2021]



Capital Park Leeds v Global Radio Services [2021]

- Tenant had to give vacant possession of “the Premises”.
- “The Premises” included landlord’s fixtures.
- Tenant stripped out everything before the break date.
- Trial judge: Break failed.
- Court of Appeal: Break successful.
 - > Break clause was focused on ‘vacant possession’ of the Premises as they were from time to time, not on physical condition.



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Conflicts remain

- **Even if stripping out is the right course to exercise a break, conflicts will remain:**
 - > Time may run out to get it right (as in Capitol Park).
 - > Potential damages claim for ‘over-removal’ or other damage.
 - > Failure to make good: potential damages claim.
 - > Terminal dilapidations and other breaches: potential damages claim.
- Removal may give certainty, but at a price.**

If the break requires compliance with all tenant covenants: GOOD LUCK!



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